

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

In the Matter of	)	
	)	
NeuStar, Inc. Request to Allow Certain	)	CC Docket No. 92-237
Transactions Without Prior Commission	)	DA 04-1041
Approval and to Transfer Ownership	)	

**COMMENTS OF COX COMMUNICATIONS, INC.**

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May 12, 2004

## **SUMMARY**

The Commission should use this proceeding to clarify and strengthen the neutrality requirements applicable to the numbering administrator. While the Commission should grant some of the relief requested by NeuStar, it also must balance NeuStar's requests against the imperative of neutrality. This balance can be reached by imposing certain limitations on NeuStar's operations and finances, and by ensuring that the Commission and the NANC have sufficient data to fulfill their oversight obligations.

Limitations on changes in NeuStar's operations and finances should be linked directly to compliance with neutrality. They include maintaining current limits on Warburg's involvement in the company, requiring NeuStar's governing documents and structure to reflect its neutrality obligations and preventing excessive TSP ownership of NeuStar debt or equity. The Commission also should make it clear that whatever action it takes in this proceeding has no effect on NeuStar's obligation under other rules or under negotiated agreements to provide numbering-related services.

To ensure that the Commission and the NANC can provide appropriate oversight, the Commission must require strengthened reporting of NeuStar activities, particularly activities that NeuStar now asks to be allowed to undertake without prior approval. While NeuStar should be allowed to use securities filings to meet reporting requirements, it should be required to provide them to the FCC immediately upon filing with the SEC, and anything not covered in SEC filings must remain subject to separate reporting.

Finally, the Commission should not approve a potential IPO or transfer of control at this time. NeuStar has not provided enough information for the Commission to determine whether an IPO would be in the public interest.

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**COMMENTS OF COX COMMUNICATIONS, INC.**

Cox Communications, Inc. (“Cox”), by its attorneys, hereby submits its comments in the above-referenced proceeding.<sup>1</sup> For the reasons described below, Cox urges the Commission to use this opportunity to clarify and strengthen the neutrality requirements applicable to the numbering administrator. While Cox does not oppose NeuStar’s plans to broaden its financing and embark on an initial public offering, the NeuStar Request raises significant issues that should be addressed now. In addition, Cox submits that it is too soon for the Commission to grant NeuStar authority to transfer control because the specifics of the planned IPO have not been determined, let alone disclosed.

**I. Introduction**

Cox is one of the leading providers of competitive local telephone service, serving over one million customers in thirteen markets across the country. Cox has invested billions of dollars in its telephone infrastructure and most recently introduced the first fully facilities-based residential CLEC service in Fairfax County, Virginia.

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<sup>1</sup> Public Notice, “NeuStar, Inc. Request to Allow Certain Transactions Without Prior Commission Approval and to Transfer Ownership CC Docket No. 92-237 DA 04-1041 (rel. Apr. 22, 2004 (the “Public Notice”). The Public Notice seeks comment on a series of proposals made by NeuStar in an April 14, 2004 letter to the Commission (the “NeuStar Request” or the “Request”).

Given its strong interest in providing competitive telephone service, Cox has been involved in numbering issues and, in particular, number portability since before the enactment of the 1996 Act. Cox has represented the cable industry at the North American Numbering Council (the “NANC”) and was one of the original members of the regional number portability limited liability companies. Today, Cox continues in its role as a member of North American Portability Management, LLC (“NAPM”), participates in the Numbering Oversight Working Group and has ongoing involvement in the NANC through the National Cable and Telecommunications Association. As a consequence, Cox has first-hand experience in considering and addressing the types of neutrality issues raised by the NeuStar Request.

In considering the Request, the Commission must balance two considerations. First, as the history of numbering administration demonstrates, maintaining neutrality of the numbering administrator is critical to ensuring that all participants in the telecommunications marketplace can have confidence in the numbering mechanism. This is particularly critical when, as now, the numbering administrator also is responsible for administering other important functions such as number portability and number pooling.<sup>2</sup> The second consideration is that the numbering administrator must have enough flexibility to operate its business in a rational fashion. While this second consideration cannot prevail over the requirement for neutrality, it is reasonable for the Commission to accommodate reasonable business needs when possible.

When viewed in this context, the appropriate response to the NeuStar Request is clear. While much of the relief NeuStar seeks is reasonable, the Commission should ensure that NeuStar is not given so much flexibility that it can avoid – intentionally or otherwise – either the basic neutrality requirements or Commission oversight. Thus, the Commission should grant

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<sup>2</sup> NeuStar also acts as administrator or registrar for several top-level domains, including .us and .biz.

those elements of the NeuStar Request that permit it to raise additional capital without endangering neutrality and should adopt reporting requirements that give the Commission and the industry appropriate notice of actions that could affect neutrality without undue delay. By the same token, the Commission should not approve changes in the current requirements that endanger NeuStar's neutrality, such as excessive loosening of the restrictions on who may serve on the NeuStar board. The Commission also should not approve changes that will have unknown impacts, most notably the request for pre-approval of a transfer of control through the as-yet undefined NeuStar IPO. In that case, it is more appropriate to wait until more is known about how the IPO will be conducted.

## **II. Compliance with Neutrality Requirements**

NeuStar proposes modifications to current neutrality requirements to make it easier for the company to raise capital and restructure its operations. These changes include additional flexibility in setting the composition of NeuStar's board and in structuring the company; granting NeuStar the right to issue additional debt and equity securities without prior FCC approval; and permitting acquisitions of companies that are not telecommunications services providers ("TSPs"). Cox agrees with the principle that NeuStar should be afforded additional flexibility in these areas. However, and as described below, the Commission should maintain the key elements of the current regime of neutrality safeguards. At the same time, the Commission also should make it plain that any changes in the federally-mandated neutrality requirements have no effect at all on separate requirements contained in NeuStar's existing contracts and other regulatory obligations.

**A. Limitations on Warburg's Influence**

One of the most important elements of the current regime is that it ensures that Warburg Pincus & Co. does not have a disproportionate influence on NeuStar's operations. This is important for several reasons, but it is particularly significant because of Warburg's other interests in TSPs.<sup>3</sup> NeuStar has proposed several changes in the neutrality requirements that could affect Warburg's influence over the company. In many cases, the effect would be to limit Warburg's role, and Cox has no objections to these changes. In two cases, however, it is unclear whether the proposed changes would ensure that Warburg could not gain more influence. Because the Commission has a special obligation under Section 251(e) to ensure impartial administration of telephone numbering, it must be particularly careful to address these issues.

First, NeuStar asks for authority to make "[c]hanges to the Board's structure or size, provided that a majority of the directors are unaffiliated with Warburg[.]"<sup>4</sup> This change potentially could increase the number and percentage of Warburg directors on the NeuStar board. Under the *NeuStar Transfer Order*, Warburg currently is limited to two seats on a five member board, or 40 percent of the total, but the NeuStar Request, if granted, would permit Warburg to hold three seats out of seven or four seats out of nine.<sup>5</sup> Warburg's influence is significant today, but permitting Warburg to hold only one seat short of a majority in a larger board would tend to increase that influence, even if only incrementally. In other words, there would be additional risks to neutrality if the NeuStar proposal were adopted. Consequently, Cox submits it would be more consistent with the principles of the *NeuStar Transfer Order* and the Commission's rules to

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<sup>3</sup> See Request of Lockheed Martin Corporation and Warburg, Pincus & Co., *Order*, 14 FCC Rcd 19792, 19798-9 (1999) (the "*NeuStar Transfer Order*").

<sup>4</sup> NeuStar Request at 6.

<sup>5</sup> *NeuStar Transfer Order*, 14 FCC Rcd at 19812.

either limit Warburg to two seats or not more than 40 percent of the board, regardless of how many seats might be added.<sup>6</sup>

Second, NeuStar seeks to be allowed to engage in equity transactions prior to the IPO, with the condition that “Warburg’s percentage equity interest in NeuStar is diluted or not disproportionately increased.”<sup>7</sup> Cox believes that the intent of the last clause of this request is to permit Warburg to maintain its current percentage equity interest if NeuStar sells or buys back stock, and has no objection to such a provision. However, that clause also could be interpreted to permit Warburg’s equity percentage to increase in certain circumstances (for instance, if other shareholders tendered shares in a buy-back, but Warburg did not). If this were to happen, Warburg’s influence on NeuStar could be further increased, with the consequent risks to neutrality. For that reason, Cox suggests that the Commission clarify that NeuStar may not permit Warburg’s percentage equity interest, whether held directly or through the trust, to exceed its current level without explicit Commission approval.

## **B. Changes in the Governing Documents and Corporate Structure**

The Request also seeks authority to make changes in NeuStar’s governing documents, such as bylaws, and corporate structure without obtaining prior Commission approval. Again, as a general matter, Cox does not believe that these requests are objectionable. However, they must be conditioned on NeuStar’s compliance with specific neutrality safeguards.

NeuStar asks permission to make changes to its governing documents, with only the proviso that those changes cannot give TSPs or their affiliates “any rights that are not enjoyed by

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<sup>6</sup> In addition, no other TSPs should be permitted to be represented on the board. The Warburg presence represents a compromise and should not be considered a precedent to permit other TSPs to have such influence on NeuStar.

<sup>7</sup> NeuStar Request at 7.



other holders of the class of securities held by such entity.”<sup>8</sup> While this condition plainly is appropriate, it is not sufficient to protect against violations of the neutrality rules. For instance, this condition would not be violated if both TSPs and non-TSPs have the right to buy 100 percent of NeuStar’s equity, even though it would be a violation of the neutrality rules for a TSP to own all of NeuStar. To guard against such possibilities, NeuStar should be required to adopt specific conditions to prevent neutrality violations, such as limitations on the amount of stock and debt TSPs can own. Such limitations have been used by other companies required to comply with Commission requirements. Notably, prior to the enactment of the ORBIT Act, COMSAT’s articles of incorporation contained restrictions on ownership of stock by carriers and non-carriers. For that matter, many broadcast licensees have adopted provisions in their articles of incorporation limiting ownership of their stock by aliens, as a way of facilitating compliance with the alien ownership provisions of the Communications Act.<sup>9</sup> In addition, NeuStar’s governing documents should require it to comply with all elements of the Commission’s neutrality regime, so that officers, directors and employees understand that maintaining neutrality is part of their fiduciary duty to the company.

Any authority that the Commission grants for NeuStar to alter its corporate structure also should be conditioned specifically on ongoing compliance with neutrality requirements.<sup>10</sup> Although it is not possible to catalogue all the issues that might arise, it is not difficult to imagine restructurings that would have neutrality implications. For instance, if NeuStar were to create a

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<sup>8</sup> *Id.* at 6.

<sup>9</sup> One way to implement such limitations would be to provide that any TSP is prohibited from owning stock or holding debt in excess of a specified limit, that NeuStar shall not record any stock transfers in violation of the limit and that no TSP shall be allowed to vote any stock that exceeds the limit. Cox notes that NeuStar suggests similar types of limitations, but does not propose to include them in its governing documents. *See id.* at 7.

<sup>10</sup> *See id.* at 6 (asking for authority for “[c]hanges to corporate structure, including reorganization into one or more subsidiaries or disposition of subsidiaries.”).

separate subsidiary for its Internet registry business and sell an equity interest in that business to a TSP, there could be effects on NeuStar's actual neutrality. In addition, and as described below, NeuStar should be required to report any restructuring to both the Commission and the North American Numbering Council ("NANC") to facilitate oversight of NeuStar's neutrality compliance.

### **C. Debt and Equity Ownership**

NeuStar seeks permission to issue debt and equity, subject to certain limitations.<sup>11</sup> While in many cases these limitations appear on their face to be consistent with the Commission's neutrality rules, NeuStar's proposals do not address significant open questions concerning the application of the neutrality rules. In addition, experience suggests that, in this case, it may be appropriate to adopt more stringent limitations, particularly on any IPO that NeuStar may undertake.

The first open issue is raised by NeuStar's proposal that it be permitted to "issue indebtedness to any entity" if the level of indebtedness is consistent with Section 52.12(a)(1)(ii) of the Commission's rules.<sup>12</sup> However, this rule addresses only total indebtedness, and does not consider the impact of individual debt holdings on NeuStar's neutrality.<sup>13</sup> If a single TSP held 50 percent of NeuStar's total debt, as the rule could be read to permit, that TSP could have significant influence on NeuStar's operations. To avoid that possibility, the Commission should interpret the rule as a limit on total holdings of NeuStar debt by TSPs. Further, the Commission should require NeuStar to adhere to additional limitations on individual TSP ownership of

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<sup>11</sup> *Id.* at 6-8.

<sup>12</sup> *Id.* at 6.

<sup>13</sup> 47 C.F.R. § 52.12(a)(1)(ii).

NeuStar debt so as to prevent any one TSP from having undue influence. A reasonable level for such a limit would be five percent.<sup>14</sup>

Similarly, the Commission should interpret the limitations in Section 52.12(a)(1)(i) strictly to limit the potential for influence of TSPs on NeuStar.<sup>15</sup> The Commission should view the 10 percent limit in that provision as a limit on total equity ownership by TSPs, not as a limit on individual TSP ownership. Even if the Commission does not wish to apply the current rule this strictly, it should consider whether to modify the rule to place overall limits on TSP interests in NeuStar, with total TSP ownership capped at a level of no more than 20 percent. Otherwise, NeuStar could end up in the same situation as Bellcore, which was not controlled by any one of the Bell companies, but nevertheless obviously was under control of TSPs.<sup>16</sup> Regardless of whether the Commission adopts a strict interpretation or modifies the rule, it should not permit TSPs to avoid limitations by placing excess interests in the NeuStar trust; rather, those interests should be deemed void and, as described above, should be barred outright under NeuStar's governing documents.

To avoid having any one entity obtain undue influence over NeuStar in any IPO, the Commission should adopt the principle suggested in the NeuStar request and limit the percentage of NeuStar that any purchaser can obtain in the IPO.<sup>17</sup> However, the threshold proposed by NeuStar – 9.9 percent – is too high and could give a purchaser significant power in the operations of the company. For that reason, the Commission should lower the maximum

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<sup>14</sup> The Commission could make an exception for entities, such as pension funds, that have broad holdings in multiple entities or that act principally as investment vehicles rather than as carriers. However, any entity that wholly owns a TSP should be treated as a TSP for the purpose of determining whether the limitations are met.

<sup>15</sup> 47 C.F.R. § 52.12(a)(1)(i).

<sup>16</sup> Such a conclusion is not inconsistent with the current ownership of NeuStar, as the trust is a device used to prevent Warburg from effectively having more than a 9.9 percent interest.

<sup>17</sup> NeuStar Request at 7.

percentage interest acquired by any IPO buyer to 4.9 percent, which should be low enough to prevent undue influence.

**D. Effect on Other Obligations**

Whatever actions the Commission takes in this proceeding, it should recognize that NeuStar has obligations under other rules and under agreements with other parties, such as NAPM. In any order it adopts, the Commission should make it clear that it is not changing or otherwise affecting NeuStar's other obligations and that NeuStar cannot use the results of this proceeding as a shield against other contractual or regulatory requirements.

NeuStar's additional obligations fall into two broad categories. First, NeuStar has distinct neutrality obligations under agreements with other entities. These obligations, although they parallel Section 52.12 in many respects, were separately negotiated and are not the same as the Section 52.12 requirements. The entities that negotiated these obligations, such as NAPM, consider them to be integral and material to their agreements. It therefore should be clear, and the Commission should state directly, that nothing in these agreements is changed by the actions in this proceeding.<sup>18</sup>

Similarly, NeuStar also has certain non-neutrality obligations, such as the costing procedures in the number portability rules, that could be implicated by this proceeding. Notably, NeuStar has asked for authority to restructure its operations. While, as discussed above, this generally is not objectionable, it should be clear that any authority NeuStar has to restructure does not affect its obligations to meet regulatory or contractual requirements that are not related

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<sup>18</sup> NeuStar also may have neutrality obligations that relate to functions it performs under state law, such as operating NXX lotteries. Those should not be affected by the Commission's actions in this proceeding, as they are a matter between NeuStar and the states.

to neutrality. Simply put, NeuStar should not be permitted to use this proceeding as a way to modify any existing requirements, contractual or regulatory, that do not relate to neutrality.

### **III. Oversight of NeuStar's Operations**

The NeuStar Request recognizes that ongoing Commission oversight of neutrality will continue to be necessary, and commits to continuing to provide certain information the Commission already receives. While this commitment is appropriate, the operational and governance changes NeuStar proposes actually will require more oversight by the Commission and the NANC. Consequently, the Commission should strengthen the reporting requirements suggested by NeuStar.

First, NeuStar should be required to report promptly whenever it has made any of the changes that it is permitted to make as a result of the Request. The Commission and the NANC should be told of any changes in the composition of the board of directors; any sales of debt or equity by the company; any restructuring; any meaningful changes in the ownership of the company; and any changes in the company's governing documents. Because these changes all could affect NeuStar's neutrality, it is important for the Commission to know of them as soon as they occur. This is particularly important before any NeuStar IPO, as there will be no other mechanism for the Commission, the NANC or other interested parties to know of these changes during that time.

After any IPO, the same requirements should apply, but NeuStar should be permitted to meet them by providing the Commission and the NANC with copies of relevant securities filings rather than separate reports.<sup>19</sup> However, while NeuStar proposes to make its SEC filings

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<sup>19</sup> This would not affect NeuStar's obligation to report the relevant information, but would allow NeuStar to avoid duplication. However, to the extent an action is subject to the Commission's reporting requirement is not subject to SEC reporting, NeuStar should continue to be required to make a separate report to the Commission.

available to the Commission within five business days of filing (or five days of receipt in the case of Schedules 13-D and 13-G), there is no reason for any delay. Rather, NeuStar should be required to provide them to the Commission and the NANC on the same day they are provided to the SEC, and certainly no later than the next business day. There is no reason for any further delay, and in fact it should be relatively simple for NeuStar to incorporate this filing requirement in its process for preparing SEC materials.

Taken together, these reporting requirements are the minimum necessary to ensure that the Commission obtains relevant information concerning activities that could affect NeuStar's compliance with neutrality requirements in a timely fashion. In the absence of these requirements, it would be difficult for the Commission to meet its oversight obligations.

#### **IV. The Proposed IPO**

Cox recognizes NeuStar's interest in pursuing an initial public offering and does not oppose an offering of NeuStar's shares. Indeed, because an IPO would broaden the ownership of NeuStar and likely would reduce the influence of Warburg, Cox believes that an IPO could enhance NeuStar's ability to remain neutral. However, it is too soon for the Commission to approve any transfer of control that would result from an IPO because NeuStar has not provided enough information for the Commission to make the necessary public interest determinations. As the Commission has noted on several occasions, it has an obligation to ensure that any changes in NeuStar's ownership and structure are consistent with the public interest. In the absence of specific details of the IPO, the Commission cannot meet that obligation.<sup>20</sup>

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<sup>20</sup> See, e.g., Letter from Dorothy Attwood, Chief, Wireline Competition Bureau to Ed Freitag, Esq., NeuStar, Inc. (July 12, 2002).

**V. Conclusion**

For all these reasons, Cox Communications, Inc. respectfully requests that the Commission adopt an order that is consistent with these comments.

Respectfully submitted,

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May 12, 2004

## **CERTIFICATE OF SERVICE**

I, Vicki Lynne Lyttle, a legal secretary at Dow, Lohnes & Albertson, PLLC do hereby certify that on this 12th day of May, 2004, copies of the foregoing Comments of Cox Communications, Inc. were served by hand-delivery to the following:

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